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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPIIN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF MISSISSIPPIMarshall Fisher (Mississippi Commissioner
of Public Safety), Herb Frierson (Mississippi
Commissioner of Revenue), Jim Hood (State
of Mississippi Attorney General), Marvin
Vaughn

Plaintiffs (Counter-Defendants)

vs.

Tracy Arnold,
Respondent (Counter-Plaintiff)

Cause # 4:18-cv-00191-DMB-RP

Jury NOT requested:

*"Deuteronomy 25:1: If there be a con-
troversy between men, and they come
unto judgment, that the judges may
judge them; then they shall justify the
righteous, and condemn the wicked."*

RESPONSE TO THE COURTS ORDER TO SHOW CAUSE

COMES NOW, Tracy Arnold, Respondent (Counter-Plaintiff), who respectfully sub-
mits this Response to this Honorable Courts Order to Show Cause "why action should
not be dismissed for lack of jurisdiction" entered December 7th, 2018 as Docket No. 7.

1. FEDERAL QUESTION JURISDICTION

1.1. Fisher et al, the Plaintiffs, on their own showing raise a substantial federal question
and plead federal jurisdiction over this cause because on the face of their com-
plaint is 17 references to Title 23 of the Code of Federal Regulations, specifically,
each and every item on the face of their complaint are found only in 23 CFR Ch.3
Part 1327 Appendix A (see EXHIBIT A) and not a single reference to any State
law, statute or regulation can be found within the 4 corners of their complaint.

"[F]ederal question" jurisdiction has long been governed by the well-pleaded-com-
plaint rule, which provides that "federal jurisdiction exists only when a federal ques-
tion is presented on the face of the plaintiff's properly pleaded complaint." Caterpil-
lar Inc. v. Williams, 482 U. S. 386, 392 (1987).

1 1.2. The Plaintiffs are the master of their claim and present a complaint that invokes fed-
2 eral regulation as the basis for relief and did not assert a state law claim on the
3 face of their complaint. See Notice of Removal pg. 2 paragraph 1.6.

4 'A federal question "is presented" when the complaint invokes federal law as the basis
5 for relief. It does not suffice that the facts alleged in support of an asserted state-law
6 claim would also support a federal claim. "The [well-pleaded-complaint] rule makes
7 the plaintiff the master of the claim; he or she may avoid federal jurisdiction by exclu-
8 sive reliance on state law.'" Ibid. See also *The Fair v. Kohler Die & Specialty Co.*, 228
9 U. S. 22, 25 (1913)

10 1.3. In *Copeland v. Michaels Corp.*, it seems the Plaintiff's facts admit to being involved
11 in a benefit program and thus has consented to the rules and procedures of that
12 program, otherwise being the master of the claim Copeland could choose the
13 venue most favorable to Copelands cause. Tracy is not involved in the benefit li-
14 censing scheme and the Plaintiff's facts on the complaint agrees Tracy does not
15 have a license. Tracy does not have a plumber's license, nor dental license, nor
16 teacher's license, nor medical license, nor attorney's license, nor driver's license as
17 she is not engaged in any of these activities that lawfully require a license. ie., tax
18 receipt.

19 1.4. A license first requires that the activity is for-profit, second, the profit is derived
20 from or affects the public and last the license requires that the legislative body has
21 declared the occupation a privilege and taxes it as such.

22 1.5. For the record, the Federal Regulation at "23 CFR 1327 Appendix A Part I - For
23 Cause Withdrawals B51 Expired or no driver license", alleged as the Plaintiffs'
24 claim for relief is the exact code mandated by United States Department of Trans-
25 portation for participating states to record the final determination of the action.
26 Therefore, the Plaintiff is using Federal Regulation as their basis for relief on the
27 face of the complaint and using that exact federal regulation to report the final
28 outcome to the federally enacted National Driver Registry System which is con-
29 trolled and regulated by the U. S. Dept. of Transportation.

1 1.6. The Plaintiffs', on their own showing, have chosen to move under federal regulation
2 and not any state law. For the District Court to ignore the federal question on the
3 face of the complaint would be to ignore the decision in *Caterpillar Inc. v.*
4 *Williams*, 482 U. S. 386, 392 (1987) specifically by ignoring that a federal ques-
5 tion "is presented" when the complaint invokes federal law as the basis for relief
6 which is exactly what we see on the face of the Plaintiffs' complaint.

7 1.7. The Plaintiffs cannot make use of 23 CFR 1327 in any way not contemplated by the
8 US Dept. of Transportation and Congress.

2. DIVERSITY OF CITIZENSHIP

9 2.1. Tracy is not domiciled in Mississippi.

10 2.2. Tracy is not a resident of Mississippi.

3. TRAFFIC

11 3.1. The other unquestioned context of the complaint is that it is connected to traffic.

12 3.2. In the context of lawful government action, traffic is wholly and completely a subset
13 of commerce.

14 In the case of *Gibbons v. Ogden* the court said,—'Commerce is traffic; but it is some-
15 thing more. It is intercourse. It describes the commercial intercourse between nations
16 in all its branches, and is regulated by prescribing rules for carrying on that inter-
17 course.' ... 'In regulating commerce with foreign nations, the power of Congress does
18 not stop at the jurisdictional lines of the several States. It would be a very useless
19 power if it could not pass those lines.' 'If Congress has the power to regulate it, that
20 power must be exercised whenever the subject exists. **If it exists within the States**, if a
21 foreign voyage may commence or terminate at a port within a State, **then the power**
22 **of Congress may be exercised within a State.**' 'The power of Congress comprehends
23 navigation within the limits of every State in the Union, so far as that navigation may
24 be connected with commerce with foreign nations, or among the several States.' 'It is
25 the power to regulate; that is, to prescribe the rule by which commerce is governed.'
26 George Smith, Plaintiff In Error, v. William Turner, Health-Commissioner Of The
27 Port Of New York. James Norris, Plaintiff In Error, v. The City Of Boston., 48 U.S.
28 283, 436 (U.S. 01/01/1849)

1 3.3. U.S. Dept of Transportation was created and duties, functions and powers of the
2 Secretary of Commerce were transferred to the new Secretary of Transportation in
3 PL 89-670 Sec. 6.

4 3.4. The Plaintiffs' as agents of the Secretary of Transportation must query the National
5 Driver Register before issuing a Driver's License. The Plaintiff's are not empow-
6 ered to act with sovereign authority to "license" whomever they will. See 49 USC
7 30304 (e) and 31 Miss. Code R. Part 1 Rule 10.13.

8 3.5. Mississippi cannot issue a driver's license unless the federal program allows the is-
9 suance of a license. If it not be commerce, Congress is powerless.

4. CRIMINAL VS CIVIL

10 4.1. This Honorable Court in the Order to Show Cause stated that the facts asserted by
11 Tracy Arnold are insufficient to establish jurisdiction because "only a very small
12 class of criminal cases are removable to federal court."

13 4.2. Title 23 CFR 1327 is criminal or civil does not change the fact it is federal law ei-
14 ther way.

15 4.3. In the Notice of Removal it was stated that Mississippi Rules of Criminal Procedure
16 3.1(c) comments specifically reads:

17 "Rule 3.1(c) provides that these rules do not affect the use of tickets, citations, or affi-
18 davits for misdemeanor traffic violations. Traffic violations are governed by statute,
19 e.g., the Uniform Traffic Ticket Law, Miss. Code Ann. 63-9-21, and not these Rules."
20 SEE EXHIBIT B

21 4.4. Miss. Code Ann. 63-9-21 does not list any rules or procedures for challenging or ap-
22 pealing uniform traffic tickets.

23 4.5. Currently, there are no rules or procedures set forth in any chapter within Missis-
24 sippi Code for appealing or challenging uniform traffic tickets.

25 4.6. This instant case is in regard to a revenue tax that without proof of liability to pay
26 the tax is not criminal in nature. Tracy has not willfully and intentionally failed to

1 pay any tax and is attempting to reach the merits of the liability of the tax when
2 no privilege is engaged in nor any facts to a privilege alleged.

3 'A license confers a privilege, and makes the doing of something legal, which, if done
4 without it, would be illegal...Calling the tax receipt a "license" and the tax a "license
5 tax" does not confine the lawful authority to transact this business to those who have
6 paid the tax and procured the "license" any more than an ordinary tax on property
7 creates a right or authority to own property. A license is a police regulation control-
8 ling the exercise of a profession, business or occupation.' Flanigan V. Sierra County.,
9 25 S. Ct. 314, 196 U.S. 553

10 'The essential elements of the definition of privilege is occupation and business, and
11 not the ownership simply of property, or its possession or keeping it. The tax is on the
12 occupation, business, pursuits, vocation, or calling, it being one in which a profit is
13 supposed to be derived by its exercise from the general public, and not a tax on the
14 property itself or the mere ownership of it.'...."The legislature cannot, under our
15 constitution, declare the simple enjoyment, possession, or ownership of property of
16 any kind a privilege, and tax it as such. It may declare the business, occupation, voca-
17 tion, calling, pursuit, or transaction, by which the property is put to a peculiar use for
18 a profit to be derived from the general public, a privilege and tax it as such, but it
19 cannot tax the ownership itself as a privilege. The ownership of the property can only
20 be taxed according to value.' Phillips v. Lewis, 3 Shann. Cas. 231

21 "Under Mississippi law, driving is a privilege and not a fundamental right." Laving-
22 house v. Mississippi Highway Safety Patrol, 620 So. 2d 971 (Miss. 1993).

23 4.7. The Plaintiffs' complaint does not allege any facts to the essential elements of privi-
24 lege. There are no facts alleged that Tracy intentionally and voluntarily failed to
25 pay a tax thus would be the only way this tax case could possibly be criminal and
26 even then would still be federal jurisdiction over 23 CFR 1327 and 49 USC 30301
27 et seq.

28 'In the course of its instructions, the trial court advised the jury that to prove "willful-
29 ness" the Government must prove the voluntary and intentional violation of a known
30 legal duty, a burden that could not be proved by showing mistake, ignorance, or neg-
31 ligence' Cheek v. US, 111 S. Ct. 604, 498 U.S. 192 (U.S. 01/08/1991)

32 '[T]he obligation to pay taxes is not penal. It is a statutory liability, quasi-contractual
33 in nature, enforceable, if there is no exclusive statutory remedy, in the civil courts by

1 the common law action of debt or indebitatus assumpsit. United States v. Chamberlin,
2 219 U.S. 250; Price v. United States, 269 U.S. 492; Dollar Savings Bank v. United
3 States, 19 Wall. 227; and see Stockwell v. United States, 13 Wall. 531, 542; Meredith
4 v. United States, 13 Pet. 486, 493.' Milwaukee County v. M. E. White Co., 296 U.S.
5 268, 272 (U.S. 12/09/1935)

6 4.8. Further evidence that this instant suit is not criminal is the fact that the fines/penal-
7 ties are finally determined tax liabilities which creates a Debtor-Creditor relation-
8 ship with the Mississippi Department of Revenue. [See Notice of Removal Pg 8
9 paragraph 5.12.] On the face of the plaintiffs' complaint the offense falls under 23
10 CFR 1327 which is the executive implementation of 49 U.S.C. 30301 et seq. Nei-
11 ther the statute nor regulation are criminal in nature thus making this instant suit
12 civil and not criminal.

5. CONCLUSION

13 For the reasons stated above, Tracy Arnold respectfully requests this Honorable Court
14 to exercise jurisdiction based on the Plaintiffs' own showing and their well-pleaded-com-
15 plaint.



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